

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)

Preemption of Local Zoning Regulation)
of Satellite Earth Stations)

Restrictions on Over-the-Air)
Reception Devices; Television Broadcast)
and Multichannel Multipoint Distribution)
Service)

CS Docket No. 96-83

Initial Regulatory
Flexibility Analysis

To: The Commission

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COMMENTS OF THE NATIONAL LEAGUE OF CITIES; THE NATIONAL ASSOCIATION OF TELECOMMUNICATIONS OFFICERS AND ADVISORS; THE NATIONAL TRUST FOR HISTORIC PRESERVATION; LEAGUE OF ARIZONA CITIES AND TOWNS; LEAGUE OF CALIFORNIA CITIES; COLORADO MUNICIPAL LEAGUE; CONNECTICUT CONFERENCE OF MUNICIPALITIES; DELAWARE LEAGUE OF LOCAL GOVERNMENTS; FLORIDA LEAGUE OF CITIES; GEORGIA MUNICIPAL ASSOCIATION; ASSOCIATION OF IDAHO CITIES; ILLINOIS MUNICIPAL LEAGUE; INDIANA ASSOCIATION OF CITIES AND TOWNS; IOWA LEAGUE OF CITIES; LEAGUE OF KANSAS MUNICIPALITIES; KENTUCKY LEAGUE OF CITIES; MAINE MUNICIPAL ASSOCIATION; MICHIGAN MUNICIPAL LEAGUE; LEAGUE OF MINNESOTA CITIES; MISSISSIPPI MUNICIPAL ASSOCIATION; LEAGUE OF NEBRASKA MUNICIPALITIES; NEW HAMPSHIRE MUNICIPAL ASSOCIATION; NEW JERSEY STATE LEAGUE OF MUNICIPALITIES; NEW MEXICO MUNICIPAL LEAGUE; NEW YORK STATE CONFERENCE OF MAYORS AND MUNICIPAL OFFICIALS; NORTH CAROLINA LEAGUE OF MUNICIPALITIES; NORTH DAKOTA LEAGUE OF CITIES; OHIO MUNICIPAL LEAGUE; OKLAHOMA MUNICIPAL LEAGUE; LEAGUE OF OREGON CITIES; PENNSYLVANIA LEAGUE OF CITIES AND MUNICIPALITIES; MUNICIPAL ASSOCIATION OF SOUTH CAROLINA; TEXAS MUNICIPAL LEAGUE; VERMONT LEAGUE OF CITIES AND TOWNS; VIRGINIA MUNICIPAL LEAGUE; ASSOCIATION OF WASHINGTON CITIES; AND WYOMING ASSOCIATION OF MUNICIPALITIES

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May 6, 1996

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. § 601 et seq., requires the Commission to prepare an initial regulatory flexibility analysis that shall contain:

- (1) a description of the reasons why action by the agency is being considered;
- (2) a succinct statement of the objectives of, and legal basis for, the proposed rule;
- (3) a description of and where feasible, an estimate of the number of small entities to which the proposed rule will apply;
- (4) a description of the projected reporting, recordkeeping and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record; and
- (5) an identification, to the extent practicable, of all relevant Federal rules which may duplicate, overlap or conflict with the proposed rule.

The Commission's initial regulatory flexibility analysis ("IRFA") with respect to the Commission's presumptive preemption rule ("Proposed Rule") is inadequate and does not comply with the requirements of the RFA. First, the IRFA does not adequately state the objectives of the Proposed Rule as required by 47 U.S.C. § 603(b)(2). The Commission limits its statement of objectives to the preemption of non-federal restrictions on devices designed for over-the-air reception of television broadcast and multichannel multipoint distribution services ("MMDS"). Yet one of the main objectives of the Proposed Rule is to preempt state and local zoning, land-use, building and similar regulations affecting devices designed for the reception of over-the-air television broadcast and MMDS signals. Thus, the statement of objectives is materially deficient.

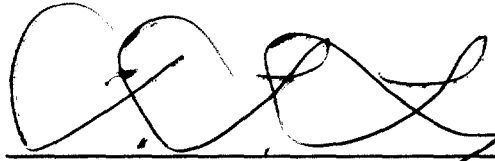
Second, the IRFA ignores the substantial economic and administrative impact that the Proposed Rule will have on the more than 37,000 small local governments it will affect.¹ In fact, the Proposed Rule would require virtually all of these local governments to amend their laws and to file petitions at the FCC in Washington for permission to enforce those laws. Thus, the IRFA fails to describe the compliance requirements as required by 47 U.S.C. § 603(b)(4). These issues were raised in the comments to the Commission's notice of proposed rulemaking regarding its recently adopted presumptive preemption rule relating to satellite earth stations² and in the series of letters from municipalities listed at Appendix A to the Report and Order and Further Notice of Proposed Rulemaking, IB Docket No. 95-59, DA 91-57, 45-DSS-MISC-93 (released Mar. 11, 1996), yet the Commission does not mention them in the IRFA.

The Commission's failure to comply with the terms of the RFA by providing a succinct statement of the objectives of the Proposed Rule, and a description of the compliance requirements of the rule render the IRFA deficient. Any final regulatory flexibility analysis should properly identify of the objectives of the Proposed Rule, and should take into account the impact the Proposed Rule will have on small governmental jurisdictions, as well as on small businesses.

¹ See 5 U.S.C. § 604. The term "small entities" is defined at 5 U.S.C. § 601(6), and includes small governments of populations of less than 50,000. There are more than 37,000 such small governments.

² Preemption of Local Zoning Regulation of Satellite Earth Stations, 10 FCC Rcd 6982 (1995).

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'J. Darrell Peterson', is written over a horizontal line.

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